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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 490 (SHS)

5 ROBERT MENENDEZ,  
6 WAEL HANA, a/k/a "Will Hana,"  
and FRED DAIBES,

7 Defendants.

Trial

8 -----x

9 New York, N.Y.  
10 July 2, 2024  
5:05 p.m.

11  
12 Before:

13 HON. SIDNEY H. STEIN,

14 District Judge  
15 -and a Jury-

16 APPEARANCES

17 DAMIAN WILLIAMS

United States Attorney for the  
Southern District of New York

18 BY: PAUL M. MONTELEONI

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-and-

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National Security Division

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(Trial resumed; jury not present)

THE COURT: All right. All the attorneys are here, and you're waiving your clients' appearances, as I understand it. Is that correct?

MR. WEITZMAN: Yes, your Honor. We've spoken to our client, and he waives his appearance.

MR. LUSTBERG: Same for Mr. Hana.

MR de CASTRO: And for Mr. Daibes.

THE COURT: All right. What I want to do this afternoon is the objections on the charts. I've decided the Critchley deposition objections. I'm having my clerk pass out the order. It's already been filed. These are copies for you, if you want. So that should be done. You can adjust the video accordingly, and it will be played tomorrow then. Then we'll have Gannaway on, and we'll see about the paralegal and Critchley. And that should be the full day.

That leaves *sub judice* for tomorrow or another day the Hana 613 issue on Uribe and the Hana employees issue. But right now, we'll do the exhibits.

MR. LUSTBERG: You're not going to rule on those Hana motions today.

THE COURT: That's correct.

MR. LUSTBERG: OK. That means that we're not putting on our employees tomorrow.

THE COURT: Well, as I previewed what we were doing,

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1 there's a full day tomorrow of Gannaway; the paralegal, if the  
2 paralegal goes on; and Critchley. The representation to me was  
3 that Gannaway, I think, would be approximately three hours on  
4 direct.

5 Is that right?

6 MR. WEITZMAN: Your Honor, we are trying to streamline  
7 as best as possible. We are reacting a bit to what we've seen  
8 from the jury. They want to get to deliberations, and we're  
9 considering streamlining Gannaway considerably as a result.

10 THE COURT: All right. Well, that's good to hear.

11 Mr. Lustberg, all I can tell you is that I'm not  
12 giving you my rulings on that. I will tomorrow, if at all  
13 possible.

14 MR. LUSTBERG: We'll be prepared either way.

15 MR. MARK: And your Honor, we've spoken with  
16 Mr. Lustberg. One of those employees, IS EG employee No. 5,  
17 who I think we'll be able to work out, largely work out the  
18 evidentiary issues so to the extent that Mr. Lustberg is  
19 prepared to call that witness, I think that would probably be,  
20 and there's time in the day, we think that probably could be a  
21 useful way to proceed tomorrow.

22 THE COURT: All right.

23 MR. LUSTBERG: Agreed, your Honor. We'll be prepared  
24 to call her.

25 THE COURT: OK. No. 5 will come on if there's time.

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1 MR. LUSTBERG: Yes.

2 MR. WEITZMAN: Your Honor, if I can just elaborate on  
3 my comment earlier.

4 THE COURT: I'm not sure you should elaborate. I  
5 loved every word you said, which was, just for the record, you  
6 indicated that your view of watching the jury was that they  
7 really would like this to conclude so they can go into  
8 deliberations, and I share that view. One never knows, of  
9 course, but just looking at them, it seems to me that that's  
10 correct.

11 Go ahead.

12 MR. WEITZMAN: One of the issues is our witness will  
13 establish the process by which the summary charts were created  
14 in order to offer and admit them. We would be willing, at  
15 least on the Menendez side -- I can't speak for others. We  
16 would be willing to consider not publishing or eliciting  
17 testimony about any particular line entries and just having it  
18 available for summations so long as the scope of  
19 cross-examination is, therefore, limited to, again, the issue  
20 of the creation of the summary charts and not as well  
21 cross-examining the witness about any line entries. So I think  
22 that that is a proper scope objection in light of what I'm  
23 proposing as the direct, but if that scope objection is not  
24 sustained, I think we need to get into the line entries.

25 THE COURT: All right. Let me just think about that

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1 for a moment.

2 You're proposing that the charts simply go in without  
3 testimony of what the line entries are?

4 MR. WEITZMAN: Rather than do what the government did,  
5 which is go line by line and have mini summations --

6 THE COURT: No. I understand.

7 MR. WEITZMAN: -- we're proposing putting them in,  
8 correct.

9 THE COURT: But what you want in exchange is the  
10 government to not cross on any of the line entries. In other  
11 words, if I understand you, that the Gannaway testimony becomes  
12 ten minutes.

13 MR. WEITZMAN: Correct, your Honor.

14 MR. MONTELEONI: Well, Your Honor, our  
15 cross-examination was never going to be lengthy even when it  
16 was going to be a three-hour defense presentation. But if this  
17 is what they're doing, then there's actually no need for the  
18 chart. If the issue is just that they want the things in --

19 THE COURT: No, but they have additional lines from  
20 your charts.

21 MR. MONTELEONI: Right, and we have no problem with  
22 them offering the exhibits supporting those lines, but if  
23 they're not doing any -- and then I suppose them using that  
24 same chart as a demonstrative in a closing, if they want to,  
25 but in order for it to be --

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1 THE COURT: No. Let's get some fundamentals down.

2 I take it, Mr. Weitzman, that you are offering the  
3 chart in evidence.

4 MR. WEITZMAN: It's a summary chart. It's no  
5 different than what the government has offered. It should go  
6 back to the jury, yes.

7 THE COURT: Right. The answer to my question is yes.

8 MR. MONTELEONI: Then they should be subject to the  
9 same type of cross-examination on the chart that our charts  
10 were. The point of offering a summary chart as evidence and  
11 having it go before the jury as opposed to it being a closing  
12 demonstrative is that it will allow the presentation of it  
13 before the jury and proper -- we're not planning on going,  
14 doing all this extraneous stuff, but proper, appropriate  
15 cross-examination about the chart. I honestly was --

16 THE COURT: No, but about the chart, meaning you want  
17 to cross-examine on the line entries.

18 MR. MONTELEONI: Yes. Yes. And I think that  
19 that's --

20 THE COURT: Well, why can't you do just what  
21 Mr. Weitzman is proposing to do in the interest of time; that  
22 is, put in the chart and the underlying documents and any  
23 argument on that to be made in summations?

24 MR. MONTELEONI: Well, so, I mean some of the  
25 cross-examination is going to go to whether the chart

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1 accurately reflects what it purports to, but they don't need  
2 the chart as an exhibit to summarize anything for the jury if  
3 they're not actually proposing to use it to summarize anything  
4 for the jury. They may need the underlying documents.

5 THE COURT: Wait. I'm not sure I understand that.  
6 He's putting the chart in with the line entries as exhibits, I  
7 mean as evidence.

8 MR. MONTELEONI: Right.

9 THE COURT: He's also putting in the underlying  
10 documents. These are additional lines to your charts. He's  
11 saying, assuming the government agrees to do the same, we won't  
12 do any examination. The jury will have in evidence the line  
13 entries and the underlying documents and let everybody make  
14 their arguments in summations based on that evidence that has  
15 been introduced.

16 Mr. Weitzman, am I accurately reflecting your  
17 comments?

18 MR. WEITZMAN: 100 percent.

19 MR. MONTELEONI: Right, but --

20 THE COURT: Just a moment.

21 MR. MONTELEONI: Sorry.

22 THE COURT: So why doesn't that not only save  
23 everybody time but gives each party free rein to argue as it  
24 sees fit from the evidence during closings and the new line  
25 entries and the underlying documents would be part of the

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1 evidentiary basis for whatever arguments the government wants  
2 to make or, for that matter, the defense wants to make in  
3 summation? Why isn't that appropriate?

4 MR. MONTELEONI: Your Honor, first of all, again, the  
5 level of examination that I was proposing to do, even if it was  
6 a three-hour examination, was something along the lines of  
7 maybe 15 to 20 minutes, maximum. And I think if they're doing  
8 something shorter, I think I'll probably be able to do  
9 something somewhat shorter. But the idea of putting in a chart  
10 that goes in as evidence for the jury but is not subject to  
11 meaningful cross-examination, that's not something that we  
12 tried to do.

13 THE COURT: About the line entries or the process of  
14 having arrived at the chart?

15 MR. MONTELEONI: Well, both. There's some level of  
16 contextual analysis about the line entries. It's actually  
17 critical to understanding what the chart means and the  
18 relevance and significance of it.

19 Again, this is not going to be something that is  
20 lengthy. We saw with Richardson that some level of examination  
21 about charts, a cross-examination, can be incredibly critical  
22 to allow the jury to assess the significance of it. I think  
23 that the idea -- if they don't want cross-examination about the  
24 chart, they should just have it as a demonstrative. They could  
25 have it as a demonstrative in the closing. They could move all

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1 their exhibits into evidence. They don't get cross-examination  
2 in the evidentiary fashion about the chart, and it doesn't come  
3 in as an exhibit.

4 That's a fine thing to do. We did it with one chart  
5 as a demonstrative, but the ones that we want to be in as  
6 exhibits, as evidence for the closing were subject to extensive  
7 cross-examination about their contents, and we think that  
8 that's appropriate here. We're not even proposing to do  
9 extensive at all. We're talking about 15, 20 minutes.

10 MR. WEITZMAN: Your Honor, two things.

11 The first is once the 1006 elements are established,  
12 the evidence, the summary chart is in evidence.

13 THE COURT: Right, under 1006, it becomes evidence.

14 MR. WEITZMAN: Correct.

15 THE COURT: There has to be voluminous evidence and  
16 this summarizes it, but it comes in.

17 MR. WEITZMAN: Right.

18 THE COURT: The chart itself comes in under 1006.

19 MR. WEITZMAN: Correct.

20 THE COURT: Presumably you're moving the underlying  
21 exhibits in as well.

22 MR. WEITZMAN: Correct. And so there's no basis to  
23 deny entry or admission of an exhibit and to send it back to  
24 the jury or to force a demonstrative merely because  
25 cross-examination is limited to that issue.

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1 Secondly --

2 I'll be done in a moment, Mr. Monteleoni.

3 MR. MONTELEONI: Sorry.

4 MR. WEITZMAN: That's OK.

5 THE COURT: Wait. Restate one.

6 MR. WEITZMAN: There's no basis to deny admission  
7 merely because there is a cross-examination about the line  
8 entries.

9 Secondly, you'll recall that the government's view was  
10 that the witness can only repeat the words on the document,  
11 sometimes the words in the underlying document. The witness  
12 can't be asked questions about inferences to be drawn or  
13 anything else.

14 THE COURT: Correct.

15 MR. WEITZMAN: It's the same with the defense witness,  
16 Mr. Gannaway.

17 THE COURT: Correct.

18 MR. WEITZMAN: And therefore, there is nothing that  
19 can be done in cross-examination that cannot be done in  
20 summation. Every single thing -- publishing the document,  
21 publishing the lines -- can be done in summation in the same  
22 exact way, because there are no questions that can go to a  
23 witness about inferences or meaning.

24 THE COURT: I understand.

25 MR. WEITZMAN: Third, you'll recall that the

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1 government moved into evidence 700 or so documents.

2 Mr. Richenthal is shaking his head. I don't know why,  
3 but there are six to 700 documents moved into evidence en  
4 masse.

5 THE COURT: At the end.

6 MR. WEITZMAN: At the end of the case.

7 We're talking about one summary chart and the  
8 underlying exhibits. It's, I assure you, less than 600 or 700  
9 documents. We didn't have an opportunity to cross-examine any  
10 witness about their six or 700 documents moved into evidence.  
11 There was no witness to cross-examine. We're establishing the  
12 foundation under 1006, and then we will argue the inferences  
13 and publish.

14 THE COURT: I understand. Let me hear now from  
15 Mr. Monteleoni.

16 MR. MONTELEONI: I think that certainly Mr. Weitzman  
17 is right that if the requisites of 1006 are established it's  
18 potentially admissible.

19 THE COURT: And that's what we're presuming for this  
20 chart --

21 MR. MONTELEONI: Yes.

22 THE COURT: -- just as we have for each of the other  
23 charts. Go ahead.

24 MR. MONTELEONI: But I've never heard of the idea that  
25 you could limit the scope of cross-examination about a document

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1 that's being introduced to not include the document. That's  
2 really far beyond anything I've ever heard.

3 THE COURT: But wait, wait, wait. The point is these  
4 are "just" paralegals, who all they're doing -- or in the case  
5 of the government, agents. All they're doing is verifying that  
6 the underlying document -- I'm sorry, that the line entry is  
7 supported by the underlying document. So there's precious  
8 little that one can do in cross-examination there because you  
9 can't ask about inferences or conclusions or anything like  
10 that.

11 I allowed, at the urging of the defense, the defense  
12 to bring out in cross-examination of the agents parts of the  
13 document that they believed supported their case that had not  
14 been read or part of the line entry on the government case. In  
15 fact, you'll remember Mr. Lustberg being sorely aggrieved by,  
16 in his view, that the defense was not being permitted to allow  
17 that cross-examination. And I did it, and the  
18 cross-examination was to a fare-thee-well bringing out things  
19 from the underlying documents that were in evidence that  
20 supported the defense.

21 Indeed, part of the defense, not an insubstantial part  
22 of the defense case, came in on cross-examination of the agents  
23 on these charts.

24 MR. MONTELEONI: So, yes. So, first of all, what I'm  
25 proposing is to do a tiny, little fraction of what the defense

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1 did.

2 THE COURT: That's progress. We've gone from 15 to 20  
3 minutes to a tiny, little fraction.

4 MR. WEITZMAN: A tiny, little fraction of what the  
5 defense did. Now, I'm not proposing to do beyond what they  
6 did. I'm not proposing to do what they did, but if you think  
7 that I can't be effective with 20 minutes of documents, well,  
8 please give me a try. It's not going to take a lot of time.  
9 Maybe I will. Maybe I won't.

10 THE COURT: But presumably, or I would assume, since  
11 you can't ask about inferences and so forth, you're going to be  
12 doing the same thing that the defense did on cross on the  
13 government charts; that is, bringing out things about the  
14 documents that you think were not appropriately highlighted in  
15 the line entries.

16 MR. MONTELEONI: Well, to an extent.

17 I will point out your Honor has seen the charts, and  
18 we didn't make an objection to their admission on this basis,  
19 but they are inherently argumentative in a way that our charts  
20 were not. Right? Because they actually contain a version of  
21 our chart and then additional points that are denoted as  
22 defense points that are being added, that are additional  
23 information.

24 THE COURT: But the format is really, I was letting  
25 the parties try to arrive at what the format should be as to

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1 whether there should be interlineations or not, but I thought  
2 that was already worked out.

3 Go ahead.

4 MR. MONTELEONI: On the assumption that we would be  
5 able to do a moderate, meaningful cross about it. We would  
6 never have consented to the idea of a document this  
7 argumentative coming in as a 1006 exhibit without being able to  
8 ask a few basic questions about its contents.

9 THE COURT: All right. I understand.

10 Here's where we are.

11 Mr. Weitzman, I suggest you speak to Mr. Monteleoni,  
12 get a sense of what that cross is going to be and then you can  
13 tailor your direct of Gannaway to that, so maybe we can save  
14 time all around. But given the fact that the government wants  
15 the ability to cross, then I'm going to allow them to do that  
16 and your presentation should be -- you decide the scope of your  
17 presentation in light of the fact I'm going to allow cross.

18 Does that make sense?

19 MR. WEITZMAN: I will do my best to get that  
20 information from the government.

21 I guess one question is whether you're suggesting some  
22 sort of a time limit on each side. So if we do a 15-minute  
23 direct, the government gets a 15-minute cross, and they do what  
24 they do in that period of time.

25 MR. MONTELEONI: Your Honor, there are some

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1 questions --

2 THE COURT: Gentlemen, talk to each other about that.  
3 All right? Talk to each other. I suggest to each of you it's  
4 not a game. OK? It's all very serious.

5 OK. Let's do charts. The way I'm going to do it is  
6 I'm going to use as the basis, we'll start with ECF-488, and  
7 I'll go through the objections on 488. I'm not going to hear  
8 argument, by and large. On some I will, but I've considered  
9 all of these issues.

10 To start off with, I guess I'd just restate what I  
11 said during the trial, that I thought the defense was, in terms  
12 of Anton, really was not following my guidelines and was trying  
13 to put in much too much that I thought was highly prejudicial.  
14 It may not have been hospitalizations, but it certainly was  
15 prejudicial.

16 All right. Let's start. 488, II, dealing with issues  
17 regarding the relationship between Anton and Menendez.

18 1303, lines 25 to 24 -- does everybody see that? And  
19 25 to 25, whether the TRO comes in or not depends on  
20 redactions. I haven't seen the TRO. I haven't seen the  
21 redactions. If the parties have worked out the redactions,  
22 fine. Again, I assume that's been done.

23 MR. MARK: Your Honor, I wish that had. We have had  
24 very productive dealings with Mr. Hana's counsel throughout.  
25 We have not received redacted versions of all of these

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1 documents, and unfortunately, where it stands right now, we  
2 would request that your Honor strike these entries and the  
3 exhibits because nothing's changed.

4 THE COURT: Well, the only one right now -- oh, I see.  
5 The next one has a redaction issue also.

6 This does not bode well for how long this conference  
7 is going to go on. There are a couple of things in here where  
8 the redactions were proposed, and I assumed that things were  
9 acceptable to each of the parties.

10 Go ahead. What, sir?

11 MR. WEITZMAN: I'm not going to do tit for tat. All  
12 I'll say is that we're not looking to put in any of the bases  
13 for the TRO. We would redact everything in the substance of  
14 the TRO, just that she sought a TRO. That's it.

15 THE COURT: That should be acceptable.

16 MR. MARK: That might be acceptable, but we need to  
17 see that to make a determination.

18 THE COURT: Fair. Fair enough. Do it, not right at  
19 this moment but don't leave here without doing it. OK?

20 The subsequent text message to the senator, "I'm  
21 waiting for the police to reach the judge," that's out. It's  
22 highly prejudicial under 403.

23 Next thing, 1303, lines 26-58, that also has  
24 redactions in it.

25 Have you seen the redactions, government? Are the

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1 redactions acceptable? It's lined out. The redaction is  
2 actually lined out, so you have the redactions.

3 MR. MARK: Your Honor, that also has other issues,  
4 like manipulation. I think that is, once again, just far too  
5 narrow. "I worry about your safety and well-being" --

6 THE COURT: Did you talk to the other side? They  
7 proposed redactions. They gave you the redactions. Did you  
8 respond and say the redactions aren't acceptable?

9 MR. MARK: They gave us their redactions in their  
10 response to the Court.

11 THE COURT: Yes, that's correct.

12 MR. MARK: As we're saying right here, we do not think  
13 those live up to your Honor's guidance here. I said it deals  
14 with safety, it deals with manipulation, and this is not  
15 sufficient.

16 MR. WEITZMAN: Your Honor, our proposed redaction --

17 THE COURT: Just let me look at what's here.

18 Yes, sir. Go ahead.

19 MR. WEITZMAN: Our proposed redaction would be to  
20 delete the second sentence.

21 THE COURT: Right. "He's a violent man that delivered  
22 injuries to you that have affected your health and which you  
23 are still living with today." That's what you wanted deleted.

24 MR. WEITZMAN: There's already been evidence in the  
25 record, testimony in the record --

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1 THE COURT: My view is that the rest of that is overly  
2 dramatic and cumulative and prejudicial. I'm striking it.

3 MR. WEITZMAN: When you say the rest of it, what are  
4 you referring to, your Honor?

5 THE COURT: The rest of the entry on 1303, lines 26 to  
6 58, out.

7 MR. WEITZMAN: But the first sentence, "I worry about  
8 your safety and well-being" is in?

9 THE COURT: No. The whole thing. The whole thing is  
10 out --

11 MR. WEITZMAN: Your Honor --

12 THE COURT: -- as prejudicial.

13 MR. WEITZMAN: Can I just say one thing about that,  
14 your Honor?

15 THE COURT: Yes. As I say, this was part of the  
16 midnight specials. We're not going to have extensive argument.  
17 Go ahead.

18 MR. WEITZMAN: I understand that.

19 This is the entry, I believe the only entry that  
20 establishes that Senator Menendez is aware of risks to Nadine.  
21 It's the only entry that explains why he's turned on --

22 THE COURT: All right. Let's see if that's true.

23 Government, is that true? That puts a slightly  
24 different turn on it. If it's the only entry where he's aware  
25 of her concern -- I don't think that's true, but I don't have

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1 anything that I can point to right now.

2 MR. MARK: Your Honor, there's also other lines we've  
3 objected to. We've tried to be judicious. I need to take a  
4 look to see whether this is the only -- if there are other  
5 entries we didn't object to that capture as well that Menendez  
6 was aware of that. We can take a look and we can -- but it's  
7 not disputed either. Like, we didn't object to Mr. Khorozian's  
8 testimony.

9 THE COURT: No. That's different than having  
10 something actually in the record where he knows that. So far  
11 the parties have frustrated me, and my view is that there's  
12 been so much back-and-forth here and we should just proceed  
13 with my rulings.

14 Go ahead.

15 MR. MARK: Your Honor, what I will say is we'll take a  
16 look at the text messages. If there is no other message that  
17 captures the fact of his contemporaneous knowledge about  
18 safety, we would propose different redactions.

19 THE COURT: All right. Talk to each other.

20 1302, line zero, where Anton sets forth the rules and  
21 saying it's an act of emotional abuse, it inflames the jury,  
22 I'm excluding it. That's clearly out. Line zero, that entry.

23 Next is 65-1 and 65-2, the reference by Menendez to  
24 Nadine, he's good at torturing you, that's out. It's hearsay.

25 Now, going back, it seems to me if the parties can

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1 work out a reference to Menendez knowing about Nadine's concern  
2 about Anton, if this substitutes for that or if the parties  
3 feel that does it, then you can put it back in in place of the  
4 one we were talking about earlier. But right now, the torture  
5 reference is out, and it's hearsay.

6 75-3, it's out: Anton "broke into my house." It  
7 violates my direction. Defendant's response that it does not  
8 refer to any act of violence against Arslanian is not  
9 inflammatory is clearly wrong. It is inflammatory under 403,  
10 and it's also hearsay.

11 1303, lines 4 to 15. Hearsay, no exceptions, not  
12 background. It's out.

13 1303 --

14 MR. WEITZMAN: Your Honor, I apologize. I don't know,  
15 lines 4 to 15, where you're referring to.

16 THE COURT: Sorry. On 488, it's the car plate one.  
17 It's the one about the Enterprise car. It's the next-to-last  
18 bullet point on page 4 of ECF-488.

19 MR. WEITZMAN: Hold on. Your Honor, I apologize.

20 THE COURT: That's all right.

21 For your purposes, I'm going through, for all your  
22 purposes, I'm going through 488.

23 Mr. Fee, are you with me?

24 MR. FEE: I am, your Honor.

25 THE COURT: OK.

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1 MR. WEITZMAN: OK. Thank you, your Honor.

2 THE COURT: OK.

3 MR. WEITZMAN: So your ruling is 4 through 15 is out,  
4 you're saying.

5 THE COURT: Yes. Hearsay. No exceptions. It's not  
6 background.

7 345-3 and the exhibit underlying it and line 78-5, I'm  
8 going to keep in the phrase "Anton is not stopping the  
9 spoofing." I'm also going to allow in "two people in the  
10 office have gotten a text supposedly from me that Anton and I  
11 are getting married in August. Anton is not stopping the  
12 spoofing."

13 The rest is out under 401 and hearsay. The part that  
14 I've allowed in allows the parties to argue about the spoofing  
15 issue. That's the only relevant part.

16 Let's go to exhibit 1302, the next chart.

17 The first part of that, hearsay evidence pertaining to  
18 Nadine's purported work via IS EG Halal should be precluded.  
19 That has to do with employee No. 5, and I'm informed that  
20 that's been resolved by the parties.

21 MR. MARK: Again, given the scope of our discussions,  
22 we've worked out certain redactions and other limiting  
23 instructions, and we understand that the defense is not going  
24 to publish those particular entries on the summary chart, but  
25 we will engage with -- they will be introduced through IS EG

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1 employee No. 5, will be subject to cross-examination.

2 THE COURT: In other words, you agree with my summary.  
3 It's been taken care of, correct?

4 MR. MARK: Yes, your Honor.

5 THE COURT: Thank you.

6 We're now on chart 1302, lines 1208-1 and 1208-2,  
7 emails between a staffer and Arkin, it's out. It's hearsay.  
8 It's not reflective of Menendez's state of mind. It doesn't  
9 provide context. The fact that Leahy was meeting with Kamel  
10 afterwards is not context and is irrelevant. It's out under  
11 401 as well as hearsay.

12 1302, lines 159-1 -- I'm now at the bottom of page 7  
13 of ECF-488 -- Ethiopia blasts Trump remark that Egypt will blow  
14 up dam. It's hearsay. It's irrelevant to his state of mind.  
15 There's already evidence in that the conflict was the subject  
16 of public discussion. It's out under 801, 802, 401 and 403.

17 The next, on 1302, which is line 498-1, the résumé  
18 email, it's irrelevant. It clearly goes to her character.  
19 It's hearsay. "I was nominated for all the volunteer work I  
20 do," the probative value is substantially outweighed by the  
21 danger of misleading the jury. So that's out, 498-1.

22 We go to 1260-1 and 1260-2. Menendez, in his  
23 response, says that Hana would respond. There's been no  
24 response, and there's no reply by Menendez. It's hearsay, and  
25 Arkin testified that Menendez raised human rights concerns, so

O72Wmen1

1 you have that in the record.

2 The next one is 1302, lines 2-4 and 2-6. Menendez  
3 took no position. It's out. The messages are not relevant to  
4 any issue. Nadine saying to Menendez, you're truly amazing, I  
5 think this is overreaching. It's an effort to show good  
6 character. It's also misleading the jury. It's out under 403  
7 and 401.

8 The next is lines 637-1, 1198-1, Hana 1313T, 191 and  
9 191T. I've been told it's all resolved.

10 All right. Now let's go to 1303. I'm on page 9 of  
11 ECF-488. 1303, line zero, at the bottom, the entire sentencing  
12 transcript from Uribe's prior state felony conviction, there's  
13 no basis for its admission. It's not inconsistent with  
14 anything. It doesn't come in under 801(d)(1)(A) or (B). I  
15 believe the conviction and the sentence of probation are  
16 already in evidence.

17 34-1 and various dates there, in the last bullet point  
18 on page 9 of ECF-488. 13 texts by Uribe where he uses the word  
19 *culo*, "break his ass, if you would stand on your ass from a  
20 chair, your house will be cleaner." That has nothing to do  
21 with whether Menendez used the word "*culito*." It's out. It's  
22 irrelevant under 401. It's not impeachment, and it's  
23 misleading the jury. Clear overreaching. It's out. As I  
24 said, 401 and 403.

25 1142-1 to 1142-20, 1142-30 to 1142-46, 35 text

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1 messages, and Hana responded to this. The messages are between  
2 Uribe and someone else, discussing a loan. It's not 613  
3 because it's not inconsistent. It's not impeachment. It's  
4 speculative.

5 (Continued on next page)

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1 THE COURT: The suggestion that it's Uribe not Hana  
2 that took the \$150 is speculative.

3 No basis for the connection, overly speculative, and  
4 confusing to the jury under 403.

5 Hana says the fact that he would put 150 down suggests  
6 it was Uribe, not Hana, who received the cash from Parra and  
7 Hernandez. This is far too speculative and has low probative  
8 value and risks the danger of confusing and misleading the  
9 jury. It is extraordinarily speculative.

10 1142-49. The government says it's improper  
11 impeachment on a collateral matter. That is Uribe's purchase  
12 of a home is a collateral matter. No one objected to this. So  
13 I'm taking it out. No one responded to that, is what I should  
14 say. So it's out.

15 Let's move on to what the government has at the top of  
16 page 11 and characterizes it as evidence of Menendez prior  
17 specific acts.

18 MR. WEITZMAN: Your Honor, I'm loath to interrupt, but  
19 there is one thing I'd like to just bring to your Honor's  
20 attention. I know this was Mr. Hana's counsel's point.

21 But on the \$150,000 and the loan, the issue, your  
22 Honor, is that there is no evidence tying Mr. Hana to \$150,000.  
23 There is no deposit in his bank, there is no evidence of a  
24 search, there is nothing other than Mr. Uribe's testimony  
25 that -- which was hearsay, he didn't witness it, he heard from

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1 someone else that the \$150,000 was given to Mr. Hana. That's  
2 the speculation in our opinion.

3 Here you have actual evidence that Mr. Uribe possessed  
4 \$150,000 in cash, and then used that cash as a down payment.  
5 It is less speculative than the inferences government is asking  
6 to draw.

7 THE COURT: He says he has 150 down. That's correct.  
8 There is no connection between that and what you're proposing  
9 in this document. In other words, the connection that you're  
10 seeking to draw is speculative. It is based on nothing, except  
11 the fact that he has 150.

12 MR. WEITZMAN: It's based on the timing and the fact  
13 he says Parra paid a \$150,000 bribe. So the only evidence of  
14 \$150,000 existing is in Mr. Uribe's hands, not in Mr. Hana's  
15 hands. So the --

16 THE COURT: I understand.

17 MR. WEITZMAN: It is less speculative than the  
18 inferences the government is asking the jury to draw. These  
19 are just competing inferences.

20 THE COURT: I understand.

21 MR. RICHENTHAL: If helpful, and I think it is, the  
22 150K reference, which is not to cash, is in 2020. It is not in  
23 fall 2019 regarding the bribe.

24 THE COURT: My recollection is that, I was looking at  
25 the dates, I think it was April or May.

O723MEN2

1 MR. RICHENTHAL: Yes. April of '20 and the bribe  
2 conversation they're talking about is prior to, into fall 2019.  
3 That's not the only reason it's speculative. That's a major  
4 reason.

5 In addition, although I would think that should be  
6 enough, Mr. Uribe in fact purchased the home. That's not  
7 disputed. He did so even later. And all of his bank records  
8 were produced.

9 THE COURT: Wait just a second. But what Mr. Weitzman  
10 is saying is ah-ha he got the 150, it wasn't given to Hana, it  
11 was given to Uribe.

12 MR. RICHENTHAL: I heard what Mr. Weitzman said. And  
13 what I would say is the following. That requires the jury to  
14 believe the following rather fantastical series of events.

15 In fall 2019 there is a conversation --

16 THE COURT: I want to hear that. But before you do  
17 that, so don't lose that fantastical series of events. What is  
18 the relevance of the fact he actually did purchase the house?

19 MR. RICHENTHAL: Because --

20 THE COURT: Because it shows he had the 150?

21 MR. RICHENTHAL: Exactly. And the bank records were  
22 produced to the defendants long ago. And there is no cash in  
23 them. He paid by check. So the rather fantastical series of  
24 events would be as follows.

25 In fall 2019, conspirators talk about a bribe. In

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1 April 2020, one of the conspirators, now cooperating defendant  
2 Jose Uribe, refers to a \$150,000 down payment. I would note  
3 that is 20 percent of the price of the house, meaning it is a  
4 normal sized down payment. There is nothing unusual about  
5 that. Later he in fact buys the home and he uses checks, not  
6 cash, and he pays a normal down payment.

7 The home I believe is \$752,000. 20 percent is  
8 approximately \$150,000.

9 In addition, the Court I think could take notice of  
10 this fact, I don't think it is disputed. Cash doesn't mean  
11 cash in the context of a real estate transaction. There's  
12 loan, i.e. mortgage, or cash i.e. you have the money or you  
13 don't. So we're literally talking about a transaction years  
14 later, with --

15 THE COURT: I thought one is the fall, the other is  
16 the following spring.

17 MR. RICHENTHAL: So in the fall there is the bribery  
18 discussion. The following spring Mr. Uribe says to someone, in  
19 sum, I'm looking for a house, it's \$500,000, I have 150 to put  
20 down. Later he actually finds a house, he actually purchases a  
21 house. He uses checks, not cash. He puts down a normal  
22 deposit. There is a reference to cash even later, but of  
23 course everyone knows it is not cash. A, because that's not  
24 how real estate transactions work. And B, because he didn't  
25 pay in cash.

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1           So the fantastical series of events is over a series  
2 of years, following the conversation about bribes, Mr. Uribe  
3 pays a down payment in a normal amount, 20 percent of the  
4 purchase price, in checks, and the normal amount happens to  
5 match an amount of a bribe years earlier. There is nothing  
6 unusual about that. I've just had four or five speculations to  
7 get to the point the defense wants to make.

8           THE COURT: I have the point.

9           MR. WEITZMAN: Your Honor, we're not disputing that  
10 this is a normal amount in the sense that it's 20 percent down.  
11 The question is where does that 20 percent down come from.  
12 I've not seen, and the government has not offered, and there is  
13 nothing before this jury that suggests that it was paid for by  
14 check. I've not seen that check. The government hasn't shown  
15 us that check. It is 150,000 down. The exact amount that was  
16 discussed in this bribe.

17           This is a fair inference, your Honor, and it is not  
18 fantastical. It is an inference. They can argue the  
19 inferences to the jury, just like we have to argue inferences  
20 to a jury.

21           MR. RICHENTHAL: So, let me be precise. There is no  
22 \$150,000 check because it's just a text message talking about a  
23 down payment. Mr. Uribe in fact buys the home. He uses checks  
24 as I've said. There is no down payment. He outright buys the  
25 home. So the checks I am talking about are the actual purchase

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1 years later of a \$752,000 home.

2 I would also note the number of messages they want to  
3 put in about this.

4 THE COURT: 35.

5 MR. RICHENTHAL: Far outweighs the, shall we say,  
6 strained inference they want.

7 MR. WEITZMAN: We'll reduce the number of messages. I  
8 think the 150,000 and a couple of contextual messages as to  
9 what that means. But, when someone says \$150,000 down and  
10 that's the exact number that is supposedly delivered. But  
11 there is no record of a delivery of \$150,000 to Mr. Hana at  
12 all. No bank account, no deposit, searches of his home,  
13 nothing occurs, there is nothing, no evidence of that. So the  
14 only \$150,000 anybody references in this is conspiracy is  
15 Mr. Uribe. That's evidentiary.

16 MR. RICHENTHAL: So, they can argue, I'm sure they  
17 will, that Mr. Uribe was not telling the truth. That's not the  
18 fight we're having right now. The fight we are having is can  
19 you put in text messages subsequent in time talking about --

20 THE COURT: I agree with that. Uribe and a third  
21 party. I am going to exclude them on the basis that I've  
22 already said.

23 I think I've deciphered my notes. On page 11,  
24 evidence of Menendez's prior specific acts, we're really  
25 talking about the potential or actual calls to Grewal, and I

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1 think the specifics are on Hana 1303 at 101-1 which is the  
2 Raphael Fernandez to Menendez e-mail regarding antisemitism in  
3 Jackson and Dr. Richard Roberts.

4 I think it's propensity evidence suggesting that  
5 because he was considering calling Grewal or actually called  
6 him on other matters, he did so here. It's not permitted under  
7 Rule 404 and 405. It's also likely to confuse the jury under  
8 403. And certainly I think the defendant could have  
9 cross-examined Grewal on this when Grewal was on. I don't  
10 think there is any evidence that he actually called Grewal on  
11 the 101-1 issue.

12 Now, on 1142-21 to 1142-27, this is the report on the  
13 Dominican Republic Foreign Ministry's efforts to vote abroad.  
14 It has nothing to do with the call to Grewal regarding an  
15 individual case. Menendez's state of mind regarding general  
16 matters has nothing to do with this call on a specific matter.

17 It's irrelevant under 403, and risks confusion.  
18 That's 1142-21 to 1142-27.

19 It's irrelevant.

20 MR. FEE: Your Honor, if I may.

21 THE COURT: Yes.

22 MR. FEE: I think the more fair picture is to permit  
23 some evidence of contact or the suggestion that Mr. Menendez  
24 contacted Attorney General Grewal.

25 THE COURT: But you have that in the record already

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1 from Grewal.

2 MR. FEE: Your Honor, I think it is different in kind  
3 from what came through Attorney General Grewal. I think the  
4 suggestion that his staff makes -- the argument, the inference  
5 that the government has elicited repeatedly is that the mere  
6 fact that Senator Menendez contacted Attorney General Grewal is  
7 inherently suspicious.

8 THE COURT: No. I'll let the government speak for  
9 itself. But I think it has to do -- contacted him on  
10 supposedly a specific pending case is suspicious.

11 MR. RICHENTHAL: That's exactly right.

12 MR. FEE: I think we would dispute -- given the  
13 testimony of Attorney General Grewal, there was no specific  
14 case raised. I would also --

15 THE COURT: But that's different from what the  
16 inference that I think the government is seeking to draw. That  
17 is, you don't contact Grewal on -- he was very clear about  
18 this. You don't -- I don't take calls about specific cases.

19 MR. FEE: Two things, your Honor.

20 THE COURT: Then you can argue back and forth about  
21 what the nature of the call from Menendez was. But that's all  
22 on the record already.

23 MR. FEE: Two things, your Honor. One of the entries  
24 you excluded, 101-1, is about a specific case where the staff  
25 reminds Senator Menendez that he is going to call Attorney

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1 General Grewal about this. And as the Court heard --

2 THE COURT: We don't know he did, right?

3 MR. RICHENTHAL: He did not.

4 MR. FEE: That's why it's state of mind, your Honor.  
5 We're not offering it for the truth. We are saying to Senator  
6 Menendez, contrary to the inference being urged on this jury,  
7 there is nothing inherently suspicious, you don't need to bribe  
8 the man to get him to contact Attorney General Grewal. That's  
9 the only purpose for which this is being offered. This is the  
10 only purpose for which we would use it in summation, your  
11 Honor. I think excluding all of it creates an unfairly narrow  
12 picture --

13 THE COURT: We're not excluding all of it. You've got  
14 the other stuff in the record from the Grewal testimony.

15 MR. FEE: Your Honor, I think it's different in kind  
16 than the senator's staff outside of Attorney General Grewal  
17 saying, hey, Senator Menendez, here is a specific case, you  
18 offered to call Attorney General Grewal when speaking with this  
19 other constituent.

20 THE COURT: But the government said he never did so  
21 where does it get you.

22 MR. FEE: I don't know if the government knows whether  
23 he did or not. That's exactly the purpose for which we're  
24 offering it. State of mind.

25 MR. RICHENTHAL: So first, there is zero evidence he

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1 ever did, and Mr. Fee is being careful in saying he did because  
2 he didn't. Second --

3 THE COURT: You're representing to me that he did not.

4 MR. RICHENTHAL: I'm representing -- I thought I said,  
5 if I misspoke I apologize -- there is no evidence that he did,  
6 and defense counsel is not saying that he did, from which I  
7 think the Court can infer he did not. Mr. Grewal --

8 THE COURT: No. I can infer there is no evidence that  
9 he did.

10 MR. RICHENTHAL: The jury can infer there is no  
11 evidence he did. I'm noting for the record that defense  
12 counsel is not saying he did. So in addition to there being no  
13 evidence, no one in the courtroom is saying it happened.

14 Mr. Grewal was asked about his other conversations.  
15 He testified about them. There is also phone records  
16 indicating there are other conversations. This is not a  
17 pending criminal case.

18 THE COURT: My decision stands on this. It's too far  
19 afield.

20 C. Evidence of Anton's statements regarding a  
21 kickback to Nadine in connection with potentially representing  
22 Parra. I'm going to allow this, but just for Nadine's state of  
23 mind. The parties are to agree on appropriate redactions.  
24 That's 1303 lines 25-19.

25 Now let's go to D, miscellaneous line entries.

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1 MR. RICHENTHAL: Just so we understand the Court's  
2 ruling. There is a paragraph in this rather lengthy document  
3 regarding the past relationship with Mr. Anton which is  
4 separate from this issue. We understand the Court directed the  
5 parties to confer, because we have concerns about that  
6 paragraph which is not --

7 THE COURT: I understand. That's why there are  
8 redactions that are needed here. And I think the defense  
9 understands now the parameters of my ruling regarding Anton.

10 Let's go to D, miscellaneous line entries. First,  
11 36-4 to 36-5, texts between Uribe and Peguero. That's hearsay.  
12 It's unclear what the reference is to it. The statement that,  
13 quote, we are hurting people and that's not fair, end quote.  
14 The probative value is substantially outweighed by the danger  
15 of unfair prejudice and confusing the issues, it is a highly  
16 prejudicial statement. It's out.

17 MR. FEE: To whom is the prejudice unfair? We are not  
18 offering it for the truth. It's frankly proof of the competing  
19 inference about what the government is saying Uribe was up to.

20 THE COURT: You want her to say to this jury that she,  
21 and presumably Uribe, are hurting people and that's not fair?

22 MR. FEE: Your Honor, the record is very clear.  
23 Mr. Uribe admitted that they're committing insurance fraud and  
24 he's saying he didn't think he was doing anything wrong. He  
25 said both of those things to the jury. This very clearly

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1 impeaches that testimony that he thought Ana was innocent. He  
2 thought he didn't do anything wrong. It was merely an  
3 administrative issue.

4 MR. RICHENTHAL: I agree with the Court's analysis  
5 under 403. But I would submit, actually, there is another  
6 problem here. Which is this is inherently a 613 issue. And  
7 let me explain why.

8 If this is designed to impeach Mr. Uribe, which the  
9 defense said in his letter on the record, it only does that if  
10 he agreed with the statement they're hurting people, in other  
11 words if it is an adopted statement. If it is an adopted  
12 statement, i.e. an out-of-court statement offered to impeach in  
13 court testimony, he has to be cross-examined on it. He has to  
14 be shown this. Asked about it.

15 THE COURT: It may or may not be 613, but I'm standing  
16 on 403.

17 Let's move on. 36-1 and 74-1. I'm going to admit the  
18 line entries that reflect the dates. The underlying transcript  
19 is hearsay, and there is no evidence regarding whether Uribe  
20 read it or not. It is not relevant to Uribe's state of mind.  
21 But the line entries reflecting the dates can come in.

22 Let's go to 1304. A. Praise of Qatar that is  
23 unconnected to Menendez. I'm going to allow the press  
24 statements in for context, but not for the truth of the matter.  
25 That's all they can come in for, but they can come in.

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1           Let's look at B. Evidence regarding the involvement  
2 of the lawyers in due diligence. I'm going to allow that  
3 evidence to come in, but not for the truth. I don't want this  
4 to bog down on due diligence. All right. But I'm going to let  
5 the parties show that there was some due diligence, and they  
6 thought it was a worthwhile investment.

7           What they actually did is irrelevant. But the  
8 defendants can touch lightly on due diligence. I think it  
9 would be unfair to exclude all evidence of efforts that they  
10 took.

11           MR. RICHENTHAL: So can I ask the Court to consider  
12 excluding the evidence related to lawyers? For the reasons set  
13 forth in our letter, that is far more confusing.

14           THE COURT: No. I think the fact that lawyers were on  
15 board is okay. But the defendants can't argue that everything  
16 that happened was deemed legal by the lawyers and was rubber  
17 stamped by the lawyers. They can't argue that no bribe was  
18 involved because the lawyers obviously cleaned this issue up.  
19 None of that.

20           MR. WEITZMAN: That's not our intention.

21           THE COURT: But the fact that there was some due  
22 diligence is fine. But, gentlemen, you know, don't be too  
23 lengthy or heavy handed in that. I want you to be able to show  
24 what was done, but if you really go to town, that will annoy  
25 the jury no end and is unnecessary.

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1 MR. WEITZMAN: We understand.

2 MR. RICHENTHAL: One more question. So I understand  
3 the Court's talking about diligence which involves, as we  
4 understand it, an outside firm, both legal and non-legal.  
5 There are also references in the chart to Heritage internal  
6 memoranda, which we understand to be distinct from diligence.  
7 They're just confusing, and I don't think it's necessary to get  
8 into internal memoranda within the company if the Court is now  
9 permitting external valuation and legal analysis.

10 THE COURT: I hadn't separated them out that way.  
11 What's the position of the defense?

12 MR. RICHENTHAL: I was going to direct the Court to  
13 the lines 329-2 and 342-14.

14 THE COURT: I'll take a look at it now.

15 MR. RICHENTHAL: And I believe also 342-8 and 342-9.  
16 I believe there are four lines, not all sequential.

17 THE COURT: Let me take a look at them.

18 MR. FEE: Sure, your Honor.

19 THE COURT: Yes, sir. What's the response?

20 MR. FEE: Your Honor, the response is that this is  
21 diligence. I think it is a bit of an artificial distinction.

22 THE COURT: I'm going to allow it in.

23 C page 15. Additional evidence related to plea  
24 negotiations of the Daibes District of New Jersey prosecution  
25 should be precluded.

O723MEN2

1 I'm going to allow it in, but not for the truth.  
2 Simply for the fact that the plea negotiations existed. The  
3 defense cannot argue or suggest that the government hid the  
4 details of plea negotiations from the jury during its case. Do  
5 you understand that? Does that make sense?

6 MR. WEITZMAN: Yes, your Honor.

7 THE COURT: All right. Or that the government didn't  
8 want the details to come out in any way. You can't make that  
9 argument.

10 MR. RICHENTHAL: Embedded within this, your Honor, are  
11 descriptions of counsel's advocacy with respect to the Daibes  
12 matter.

13 THE COURT: That seems to me that shouldn't be in.

14 MR. RICHENTHAL: We have trouble understanding how the  
15 jury could take that, other than the fact that the Daibes  
16 matter should never have been brought.

17 THE COURT: No. The advocacy -- let me take a look at  
18 those again.

19 MR. RICHENTHAL: Or there are discussions how it is a  
20 no loss case, he may be innocent, etc.

21 THE COURT: No. That sort of thing shouldn't come in.  
22 That opinion issue shouldn't come in, no.

23 MR. RICHENTHAL: We can confer with the defense, if  
24 that's the Court's position regarding redactions.

25 THE COURT: No. He should not be prosecuted at all.

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1 Fred's view is he should not be prosecuted at all. I'm sorry I  
2 didn't distinguish those.

3 No, that type of opinion shouldn't come in. The  
4 specifics of the negotiations can.

5 D on page 16, miscellaneous line entries contained  
6 inadmissible hearsay or confusing should be precluded. That's  
7 the government's heading. I'm not saying that.

8 198-1 where he breaks his shoulder, the line item  
9 itself can come in. It's already in the record, in fact, but  
10 not the underlying self-serving hearsay press article where the  
11 senator talks about how intrepid he is and what a fighter he  
12 is. But the line item can come in. Again, the fact he broke  
13 his shoulder is already in the record. In fact, I think the  
14 testimony has him tripping on those little carts that take the  
15 senators around.

16 216-1 hearsay, clearly for the truth of the matter  
17 asserted. Doesn't go to Menendez's state of mind. It's out.

18 263-1 to 263-2. It's hearsay. It's out. For the  
19 truth of the matter asserted. There is no indication as to  
20 what, if anything, was discussed, and in fact she never sold  
21 the gold. The low probative value is outweighed by the danger  
22 of wasting time on a collateral matter.

23 326-4 is the wire transfer from her cousin for family  
24 aid. It's hearsay. Despite the argument in the papers, the  
25 thrust of the e-mail is indeed to show that she was receiving

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1 family aid. It's not relevant that she was getting family aid.

2 328-3, the press release showing that the senator was  
3 at the World Economic Forum, it's hearsay. There is no  
4 evidence in the record that it meets either 803(6), which is  
5 business records, or 803(8), public records.

6 330-1, I'm at the World Economic Forum. It's clearly  
7 hearsay when offered by the defense. It's excluded.

8 This part I didn't understand, Mr. Weitzman. You say  
9 you're substituting cell site records. If these are already in  
10 the record, then there is no issue.

11 MR. WEITZMAN: Yes, your Honor, I need to check to  
12 make sure they're in the record. I think his phone records are  
13 in the record. And the phone records clearly establish that  
14 he's in Switzerland.

15 THE COURT: I think so. I can't tell you whether  
16 they're in or not, but I remember some discussion of them.

17 MR. WEITZMAN: I'm pretty sure they are. So with your  
18 Honor's permission, those are valid --

19 THE COURT: If they're in, I have no issue with them.

20 MR. MONTELEONI: I think they're in, but there is no  
21 expert testimony about what they mean. I think I know which  
22 lines he's referring to, and certainly those records are in  
23 evidence. But I think that the value of what arguments you can  
24 make from them, without someone to interpret them, is  
25 potentially going to be limited. But we can talk after.

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1 THE COURT: Okay. You'll talk.

2 331-2 to 331-3, text exchange regarding a Heritage  
3 employee and an advisor re Fred's tarnished record. Double  
4 hearsay for the truth of the matter asserted. It has minimal  
5 relevance and it's cumulative. You'll have the due diligence  
6 in the record. That's out.

7 E. Miscellaneous line entries. Again, the  
8 government's characterization here. Just so you can orient  
9 yourself in 488 is page 17. 14-1 to 14-3, the calendar entries  
10 calls with Dan Goldman. Nadine is sick. Menendez's check to  
11 an architectural firm and engineers. It's hearsay. There is  
12 no indication on the chart as to what in fact was discussed  
13 with Goldman and the others. The defendant is inviting pure  
14 speculation by the jury. It has minimal probative value. It's  
15 outweighed about the risk of confusion. They're out.

16 180-4 and 180-5. Nadine's food poisoning. I'll allow  
17 it in. It's existing physical condition. But only the  
18 sentences that refer to her physical condition. Nothing about  
19 Bob's schedule, nothing what he had to do on those days. But  
20 existing physical condition, yes.

21 Next, 244-1 and 246-1. Checks to the architectural  
22 firms and engineers. Hearsay. There is no linkage here. It's  
23 irrelevant to the home renovations, or for that matter, as near  
24 as I can tell, a search for a new home, for those issues. So  
25 it's out.

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1           Let's go to 1305. Exhibit 1305 was provided by  
2 Menendez to the government at 9 p.m. last Friday night. That's  
3 June 28. But I had previously set a clear and definitive  
4 deadline of Saturday, June 29, at noon in which the government  
5 had to submit any objections to any summary charts. The fact  
6 that the government didn't even have these proposed Defense  
7 Exhibit 1305 in its possession until a mere 15 hours before the  
8 noon June 29 deadline was far too short a time for the  
9 government to effectively lodge any objections to the 1305  
10 chart.

11           I'm striking it for the fact that it effectively  
12 violated my order. The deadline was the deadline for the  
13 government to respond at noon on Saturday. But the fact that  
14 the defense was presenting this chart at 9 p.m. on Friday, as I  
15 say, 15 hours or thereabouts beforehand, prevented the  
16 government from effectively objecting to 1305 by noon. And  
17 therefore, I'm finding it violated my specific order.

18           In addition, it is a 22-page compilation of press  
19 releases and internal memos that Menendez took actions to  
20 advocate for Latinos over a 15-year period. There is evidence  
21 already in the record that the defense can use about his  
22 advocacy. But I am striking 1305 for violating my order.

23           In addition, it largely contains evidence of prior  
24 acts in violation of 404(b)(1). Most of it is hearsay. Much  
25 of the chart predates the charges. It goes back to I think

O723MEN2

1 2007. And it's cumulative and wasteful of the jury's time  
2 under 403. There is evidence from which the defense can make  
3 its arguments.

4 Now let's go to 2500.

5 MR. FEE: Can I briefly on that make a proposal?

6 THE COURT: Sure.

7 MR. FEE: I hear the Court's ruling. I'm not going to  
8 argue it.

9 There are two underlying exhibits which were produced.  
10 All of the underlying exhibits were produced to the government  
11 in the first defense production. And there are two exhibits,  
12 it's on 1305, it's rows -- one moment, your Honor. Row 33 and  
13 then rows 42 and 43.

14 I'm sorry. It's DX 2165. No, not that one. DX 2170  
15 and DX 2171. These are two memos --

16 THE COURT: I'm going to look at the line entries.  
17 Just a moment while I get them. While my clerk gets them.

18 MR. MARK: Your Honor, I believe 42 is September 22,  
19 2019. And 43 is March 9, 2020.

20 THE COURT: What are you telling me about those dates?

21 MR. MARK: 33 is June 6, 2017.

22 That's just how we were locating the entries on the  
23 chart. Because defense counsel did give us a revised version  
24 after we filed with line entry numbers, but we didn't have that  
25 when we filed our motion.

O723MEN2

1 MR. FEE: Do you want to hear my pitch, your Honor?

2 THE COURT: No. I don't have the underlying  
3 documents, but I'll find 1305-33 and 1305-42 and 43.

4 MR. FEE: Can I hand it up to you?

5 THE COURT: Sure.

6 MR. FEE: 42 and 43.

7 THE COURT: And 33. I thought I had 2500 here. Go  
8 ahead.

9 MR. FEE: So, your Honor, all three of these --

10 THE COURT: Have you talked to the government about  
11 this?

12 MR. FEE: No, do you want me to?

13 How do you guys feel about those exhibits?

14 MR. RICHENTHAL: I think he didn't mean on the record.

15 THE COURT: I can negotiate the propriety of the  
16 questions you're asking.

17 (Counsel conferring)

18 MR. FEE: Good news and bad news.

19 THE COURT: Just a moment. You're fighting uphill.  
20 For the reasons I've set forth, I believe the striking of the  
21 entire chart is appropriate. But go ahead.

22 MR. FEE: So I'm not fighting on the chart. The  
23 underlying exhibits, and I'll just focus on 2170 and 71 because  
24 they are similar in kind. They are memos from the senator.

25 THE COURT: Are they in 33?

O723MEN2

1 MR. FEE: I think --

2 THE COURT: They're 42 or in 43.

3 MR. FEE: The later ones. This is for the non-hearsay  
4 purpose of establishing the state of mind of the senator that  
5 he goes to events or meetings with foreign officials and  
6 civilians, constituents.

7 As recently as yesterday, the government suggested  
8 through its cross of Caridad Gonzalez that there was something  
9 unusual about the senator having direct contact with a  
10 constituent who raised a concern. This happened on cross where  
11 they asked about the woman who had raised an immigration issue,  
12 and they elicited from Caridad, or tried to, that, oh, the  
13 senator only passed off his office line.

14 There has been a series of questions through cross --

15 (Continued on next page)

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O72Wmen3

1 THE COURT: Actually, I thought the purpose of that  
2 cross was somewhat different. But go ahead.

3 MR. FEE: I think the general purpose, the general  
4 government argument I'm pointing to that these underlying  
5 exhibits do undercut is that the fact that the senator is  
6 engaging directly with constituents and the fact that he is  
7 engaging in meetings with foreign officials and members of  
8 those diaspora communities is not inherently suspicious and,  
9 therefore, does not support, or at least does not support as  
10 strongly as the government would like, the inference that Will  
11 Hana coming to that meeting with the Egyptians is evidence of a  
12 bribe.

13 That's it, your Honor. These are two exhibits.  
14 They're within the time period charged.

15 THE COURT: But where do you see in 42 or 43 anything  
16 about his engaging with constituents or involving constituents?

17 MR. FEE: These are both events in New Jersey. One is  
18 for Colombians, Colombian Americans to come, and the other is  
19 for Ecuadoran Americans to come. They're open forums, just as  
20 described in the memo. We're not going to offer any proof  
21 beyond that.

22 THE COURT: Again, all I have before me is the line  
23 entries here.

24 MR. FEE: That's right. And so if you look at the one  
25 that's dated -- I don't have the numbers here, but the

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Colombian one, on September 22, 2019.

THE COURT: Yes.

MR. FEE: It's a forum with the Colombian President Duque held, I believe, in New Jersey, and you can see that the attendees include --

THE COURT: Again, I can't, based on what I have in front of me. But go ahead.

MR. FEE: It's in there. It's inserted in the chart.

THE COURT: Oh, the next line.

MR. FEE: It's very small. I'm sorry.

THE COURT: Let me read that, the carryover.

MR. FEE: Yes. It's at Elizabeth High School, in New Jersey.

MR. RICHENTHAL: I'm happy to respond whenever the Court would like.

THE COURT: I don't know. Well, I'll hear from the government.

Anything else you wanted to tell me, Mr. Fee?

MR. FEE: No, your Honor.

THE COURT: OK.

MR. RICHENTHAL: First, this is classic hearsay. There's no such thing as a --

THE COURT: No, I don't think he's arguing that it's not clear hearsay.

MR. RICHENTHAL: I thought he said it was state of

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1 mind, which is a hearsay exception under 803, but there's no  
2 such thing as a state of mind for whether a fact occurred  
3 historically. That's not a state of mind.

4 THE COURT: Is your argument, Mr. Fee, this reflects  
5 Menendez's state of mind? As to what?

6 MR. FEE: Your Honor, I do think it reflects a state  
7 of mind that his staff is routinely telling him, or at least  
8 more than one occasion, that you're going to go to these events  
9 with civilians and foreign officials.

10 THE COURT: And that refers to his state of mind?

11 MR. FEE: Yes, your Honor. It is directed to him. He  
12 is going to the event. That's what's contemplated in the memo.

13 MR. RICHENTHAL: Again, attending something is not a  
14 state of mind or anger or sadness. It's an historical fact.  
15 He either attended or did not. In fact, Mr. Fee referenced who  
16 attended the event. Who attended the event is demonstrably an  
17 historical fact or nonfact. It cannot be admitted for his  
18 state of mind. But just to put aside the hearsay problem --

19 MR. FEE: Well, your Honor --

20 THE COURT: No. Let him finish.

21 MR. RICHENTHAL: Put aside the hearsay problem, to be  
22 clear, we're not conceding. I just think the Court can rule  
23 without even going there. The defense has chosen two events.

24 THE COURT: What do you mean when you say we're not  
25 conceding?

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1 MR. RICHENTHAL: What I mean is this is hearsay, and  
2 the Court could on that ground preclude it.

3 THE COURT: I've already found that it's hearsay.

4 Go ahead.

5 MR. RICHENTHAL: Then I don't know that I need to  
6 speak further, but I was going to say even if the Court assumed  
7 *arguendo* that it were not hearsay, it should still be  
8 precluded. Because what the defense is choosing two different  
9 events involving Latino communities in New Jersey. That has no  
10 relevance to this trial. And even if it did --

11 THE COURT: Yes, but he's not arguing -- that hurts  
12 him. He's not really arguing relevance except to say it's  
13 reflective of Menendez's state of mind that he deals constantly  
14 with open fora where there are normal constituents as well as  
15 government officials. I think that what he's doing.

16 Is that right, Mr. Fee?

17 MR. FEE: That's right, your Honor.

18 THE COURT: OK.

19 MR. FEE: We're not proving the event.

20 THE COURT: OK.

21 MR. FEE: I will say they also say it refers to the  
22 small group meeting, and then there's an open forum.

23 THE COURT: Yes.

24 MR. RICHENTHAL: So any reference to it happening is  
25 hearsay. They keep going back to what actually occurred.

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1 That's hearsay. But again, let's ignore that for a moment.  
2 They're choosing two events with Latino people for a purpose  
3 that isn't disputed. Ms. Arkin testified he meets with  
4 constituents all the time. Ms. Arkin actually testified they  
5 have a policy of trying to meet with every constituent. Some  
6 get meetings with the senator. Most get meetings with the  
7 staff.

8 THE COURT: No. With every constituent who raises an  
9 issue with him.

10 MR. RICHENTHAL: Yes, but my point is there's abundant  
11 evidence in the record that Senator Menendez is a busy man,  
12 that Senator talks to constituents, that constituents contact  
13 his office, that he goes and meets with people. In fact, there  
14 were specific series of cross-examination questions about  
15 meeting with Coptic Christians in New Jersey, about meeting  
16 with other people in New Jersey.

17 That's in the record. What isn't in the record, and  
18 under 404 and 405, should not be in the record are specific  
19 instances of meeting with specific Latino communities from  
20 which the jury undoubtedly will infer something about this case  
21 they should not infer. And everything I just said the Court  
22 could ignore because it's also just hearsay.

23 MR. FEE: I'm not quite sure I understand. We could  
24 show he's meetings with Coptic Christians from Egypt, but not  
25 Ecuadorians and Colombians. But the point is we're not going

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1 to harp on the national identity.

2 THE COURT: That cuts against you. You already have  
3 it in the record.

4 MR. FEE: Well, yes, your Honor, but this case is only  
5 about the strength of inferences to be argued. There's no  
6 direct proof of the schemes alleged. It's only about the  
7 strength of inferences, so when they say it's already in the  
8 record through Sarah Arkin, first of all, I think Sarah Arkin  
9 actually said she wasn't sure he actually met with foreign  
10 officials.

11 THE COURT: OK. I'm going to cut this off and stand  
12 by my ruling on it. It's hearsay, 404. It violates 404(b)(1).  
13 I think you do have in the record what you need.

14 Now, just so the record's clear, I'm striking 1305.

15 Now let's go on to 2500, and that's the last thing  
16 that I have on my agenda and, therefore, the last thing you  
17 have on your agendas.

18 Since this was part of the weekend events, I just have  
19 the government letter, which is ECF-493.

20 Now, 2500 is a chart that's been put in by the  
21 government with the addition of E and F.

22 First, a minor point, Mr. Fee. Fuchs is not an agent,  
23 so if the chart comes in, you have to change that.

24 MR. FEE: Yes, your Honor.

25 THE COURT: It seems to me a couple of things.

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1           One, you made these points to a fare-thee-well. I  
2           mean you went over it and over it and over it. This is the one  
3           where I think the cross was twice the direct.

4           MR. FEE: You said fairly well, your Honor, or  
5           fare-thee-well?

6           MR. MONTELEONI: Fare-thee-well.

7           THE COURT: Fare-thee-well.

8           MR. FEE: Got it.

9           Thanks, Paul.

10          THE COURT: Fare-thee-well. Mr. Weitzman would say  
11          *touche* to that.

12          So you did it to a fare-thee-well. You did the 2  
13          percent. I believe I stopped you -- I certainly hope I stopped  
14          you -- when you asked always your penultimate question about  
15          don't you think this is misleading, as overly argumentative,  
16          but it seems to me you got out all of that over and over and  
17          over again. This jury -- well, I don't know what the jury  
18          thinks of all this, but you presented all of that. Granted, I  
19          don't think you did every line, but nonetheless, you did enough  
20          and you drove that point home and home and home again and left  
21          the inference that somehow that was misleading. But I really  
22          think this is simply cumulative and a waste of time. And if I  
23          understand the testimony, the underlying cells are in evidence,  
24          so you can make the percentage argument for the ones that you  
25          didn't question her about in your summation. So I don't really

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1 see any point in putting in a new chart with E and F and  
2 wasting this jury's time. I really think you've done it.

3 Speak to me, sir.

4 MR. FEE: Your Honor, you've silenced me with  
5 flattery; I didn't know it landed so well. So we'll withdraw  
6 the chart.

7 THE COURT: OK. Thank you.

8 MR. FEE: I hear you.

9 THE COURT: That's it?

10 MR. MONTELEONI: Your Honor, can we talk scheduling?

11 THE COURT: I'll tell you what the scheduling is.

12 The scheduling is tomorrow we have Gannaway, who is  
13 going to be substantially reduced. When you give the defense a  
14 sense of how limited your cross is, they will accordingly pare  
15 down their direct. We don't need the paralegal because 2500 is  
16 out, and we've got the Critchley deposition.

17 With my rulings, about how long is the Critchley  
18 deposition? Does anyone know?

19 MR. FEE: Without the rulings, it was about an hour.  
20 So it's going to be shorter.

21 THE COURT: OK. So we're not into the afternoon. If  
22 Menendez rests, there will be an allocution. As we talked, let  
23 me know before you rest so I can do the allocution. And then  
24 we'll go into the Hana case. And we've got at least No. 5,  
25 employee No. 5 at this point. And I may be able to have

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1 rulings on the others for you by the morning.

2 MR. LUSTBERG: Your Honor, I just want to point out  
3 one issue as a result of all this. No fault of anybody, it's  
4 almost 7 o'clock.

5 THE COURT: Five more hours to go only before midnight  
6 when you guys are filing things.

7 Go ahead.

8 MR. LUSTBERG: Not me, but my concern is --

9 THE COURT: That's right. Not you.

10 MR. LUSTBERG: My concern is that the Court's rulings  
11 have to be reflected in these summary charts.

12 THE COURT: Yes, sir.

13 MR. LUSTBERG: That doesn't happen automatically.  
14 It's going to take time, and once we do it, we need to run it  
15 by the government. They're going to want to review it.

16 THE COURT: Fair point.

17 MR. LUSTBERG: I'm still a little worried about being  
18 ready first thing in the morning, as you suggested. It may be  
19 too late, but if you could do the afternoon instead of the  
20 morning, I think it would make some sense. I haven't had a  
21 chance to, obviously, confer with counsel.

22 THE COURT: I don't think we can notify the jury.  
23 They would have left by the time we start notifying them, I  
24 would think. But I understand your point, sir.

25 MR. MONTELEONI: Your Honor, I think that we think

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1 starting at 11 might make a little bit of sense. That would  
2 allow time with the parties to do anything necessary for the  
3 charts. And look, we've had to deal with some last-minute  
4 chart changes too. Redaction isn't pretty, but it goes a lot  
5 faster. We could suggest doing it that way.

6 But if we could start at 11 and then we could get  
7 rulings covering the other Hana witnesses, then we'd be in a  
8 position, I think, to potentially to get where I think we have  
9 to be, where the defense actually all rests tomorrow instead of  
10 leaving it out until Monday, which would have drastic swing in  
11 the effective length of the case and the risk of losing the  
12 jury. So that would be our proposal. If we start at 11, then  
13 I think that unless something is really unusually long, we  
14 could be in a position for all the defendants to rest. Maybe  
15 we could do a charge conference later in the day. I would be  
16 interested in that.

17 THE COURT: No. I think the question revolves around  
18 my rulings on the other Hana employees.

19 MR. MONTELEONI: Yes, though my understanding from  
20 speaking with Hana's counsel and from the conversations that  
21 we've been having is that even if all of them were permitted to  
22 testify, they're not extremely lengthy, and so if we start at  
23 11, given everything else that's there, I think it's possible  
24 that they might all be done tomorrow anyway, even if they're  
25 all allowed in. I'm not sure.

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1 I'm not at all going to promise that, but I think it's  
2 a realistic possibility. We certainly shouldn't be in a  
3 position -- or we could start at 10:30, perhaps. But we really  
4 don't want to be in a position where anything gets pushed until  
5 after the break that doesn't have to be, because given the  
6 length of a number of summations and a lengthy case and the  
7 length of the jury instructions, very concerned about hitting  
8 the window for when the jury actually gets to be able to  
9 deliberate.

10 THE COURT: But nothing's going to change except  
11 however long it takes for whatever remains, which is clearly  
12 under a day. There's no more effect than whatever the time is  
13 that it's taking up.

14 MR. MONTELEONI: Well, yes, but --

15 THE COURT: Yes, there's an advantage to everybody if  
16 everyone rests tomorrow. I don't know if that can be done.

17 MR. MONTELEONI: Yes.

18 THE COURT: OK.

19 MR. MONTELEONI: I think it could also be good to have  
20 a sense of when the charge conference will be. I think we  
21 would like it as soon as possible, but obviously a lot has to  
22 go into it.

23 THE COURT: All right. Why don't we do 10:30 then. I  
24 don't think we can contact the jurors now, but when they come  
25 in --

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1 Wait. I'll give you a chance to talk, gentlemen.

2 When they come in, we can tell them we're going to  
3 start at 10:30. I think that makes sense.

4 Gentlemen, you can talk to each other if you want.

5 MR. LUSTBERG: Your Honor, I'm just trying to express  
6 my concern that we don't have the Court's ruling with respect  
7 to both issues, our employees, who we have to get here and, you  
8 know, we've held them off. I mean we did expect to be able to  
9 get them on and off this week, but there are some logistical  
10 challenges to that. And even the Rule 613 issue, I think the  
11 discussions we've had with the government have led us to  
12 believe that that would require a witness, but we would have to  
13 put together a stipulation, depending on what the Court's  
14 ruling is.

15 THE COURT: My ruling, which I'm trying to hone, just  
16 for your planning purposes, is it's not inconsistent. OK?  
17 That's essentially it, but I want to make it clearer.

18 MR. LUSTBERG: All right. At least I understand the  
19 ruling, and we reserve our rights, of course.

20 THE COURT: Of course.

21 MR. LUSTBERG: Your Honor, I kind of agree with what  
22 the Court said. I mean if there's not going to be a charge  
23 conference tomorrow --

24 THE COURT: No.

25 MR. LUSTBERG: -- then I don't see what the great

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1 advantage is of everybody resting tomorrow as opposed to on  
2 Monday. So we can rest on Monday early in the day,  
3 presumably -- that makes the jury come in -- but then have our  
4 charge conference and do summations on Tuesday, which seems  
5 like the schedule we were working toward in any event. I'm  
6 just being clear. We have been trying to work with the  
7 schedule that we have, and we have witnesses. There are some  
8 challenges with some of those witnesses we're trying to get  
9 into the country still, and the government has been very  
10 helpful in that regard. It would be helpful to be able to do  
11 that on Monday, perhaps.

12 THE COURT: I was asked to sign a letter, which I put  
13 on the open record.

14 MR. LUSTBERG: Yes.

15 THE COURT: And I signed that letter. Are you  
16 suggesting that that person may be able to be here next week,  
17 but not tomorrow?

18 MR. LUSTBERG: Well, not that the person is not going  
19 to be here tomorrow. I think it's a possibility that that  
20 person will be here for next week.

21 THE COURT: OK.

22 MR. LUSTBERG: If not, we'll have to deal with it.

23 THE COURT: Here's what we're going to do. I've  
24 previewed my 613 ruling. I'll get you the employee rulings  
25 tomorrow. We've got employee No. 5, agreed, coming in. We'll

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1 start them at 10:30. When the jury comes in at 9:30, I'll tell  
2 them we're going to start at 10:30, and we'll take it from  
3 there.

4 I think that's the way to proceed. If everybody can  
5 rest tomorrow, wonderful. If they can't, they can't.

6 Mr. De Castro, I think you indicated you were not  
7 going to put on a case.

8 MR de CASTRO: That's right, your Honor.

9 THE COURT: Then we could have you do that in front of  
10 the jury, rest, before the Hana case starts. And that will  
11 have Menendez resting and Daibes resting, at least.

12 MR de CASTRO: Fine.

13 MR. MONTELEONI: Your Honor, should we be here at 9:30  
14 for legal matters so that we can start with the jury when the  
15 jury's ready.

16 THE COURT: Oh, you mean Hana. Come in at 10. Come  
17 in at 10. All right? You need the time, I thought. The  
18 parties need the time to effectuate my rulings.

19 MR. LUSTBERG: Yes. That's right. And it's going to  
20 be tough to get it done by 10:30, but we'll do our best.

21 THE COURT: So then don't come in early. Work on  
22 effectuating the changes in the charts, and get to your places  
23 of work now.

24 MR. WEITZMAN: I know I've already said this, but of  
25 course, if we were to just offer the chart and limit

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1 cross-examination, we could always continue discussing the  
2 redactions and so on afterwards. But I'll discuss that with  
3 the government.

4 THE COURT: Talk to each other.

5 All right. I think we've taken it as far as we can on  
6 the record. I appreciate everybody staying here.

7 Thank you.

8 MR. WEITZMAN: Thank you, your Honor.

9 (Adjourned to July 3, 2024, 10:30 a.m.)